

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

LAZARO SANCHEZ CASTRO,    } Case No. CV 11-5766-DMG (OP)  
Petitioner,    } ORDER GRANTING ISSUANCE OF  
v.    } CERTIFICATE OF APPEALABILITY  
K. HARRINGTON, Warden,    }  
Respondent.    }

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On September 6, 2012, the Court issued a Report and Recommendation of United States Magistrate Judge, recommending the denial of the Petition and dismissal of this action with prejudice. (ECF No. 39.) On December 20, 2012, Petitioner filed his Objections to the Report and Recommendation. (ECF No. 47.)

Rule 11(a) of the Rules Governing Section 2254 Cases in United States District Courts, 28 U.S.C. foll. § 2254, as amended, provides in pertinent part that: “[t]he district court must issue or deny a certificate of appealability when it enters a final order adverse to the applicant.” Under 28 U.S.C. § 2253(c)(2), a Certificate of Appealability (“COA”) may issue “only if the applicant has made a substantial showing of the denial of a constitutional right.” The Supreme Court has held that, to obtain a COA under § 2253(c), a habeas prisoner must show that “reasonable jurists could debate whether (or, for that matter, agree that) the petition should

1 have been resolved in a different manner or that the issues presented were adequate  
2 to deserve encouragement to proceed further.” Slack v. McDaniel, 529 U.S. 473,  
3 483-84, 120 S. Ct. 1595, 146 L. Ed. 2d 542 (2000) (internal quotation marks  
4 omitted); see also Miller-El v. Cockrell, 537 U.S. 322, 336, 123 S. Ct. 1029, 1039,  
5 154 L. Ed. 2d 931 (2003).

6 After review of Petitioner’s contentions herein, the Report and  
7 Recommendation, and Petitioner’s Objections to the Report and Recommendation,  
8 this Court finds that Petitioner has made the requisite showing to warrant the  
9 issuance of a COA only with respect to Claim Five regarding the sufficiency of the  
10 evidence to support the gang enhancement and special circumstance allegations  
11 with respect to the Hollywood crime.

12 THEREFORE, pursuant to 28 U.S.C. § 2253(c)(2), the Court grants the  
13 issuance of a COA with respect to the sole issue identified above. The Court  
14 denies the issuance of a COA with respect to the remaining claims raised.

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16 DATED: June 21, 2013

  
17 DOLLY M. GEE  
United States District Judge

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